Supreme Court, U.S.
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No. 95-274

In The

Supreme Court of the United States

October Term, 1995

MILTON INGRAM,

Petitioner,

v.

HILLSBOROUGH COUNTY, FLORIDA; CAL HENDERSON, in his official capacity as Sheriff of Hillsborough County, Florida; and ARA HEALTH SERVICES, INC., d/b/a CORRECTIONAL MEDICAL SYSTEMS, a Missouri Corporation,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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The following information is provided pursuant to Rule 29.1 of the rules of this Court:

Subsidiaries of ARA Health Services, Inc.

Correctional Medical Systems, Inc.

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STATEMENT OF THE CASE

A. Statement of the Case

Milton Ingram filed suit against Hillsborough County, Florida; the Sheriff of Hillsborough County; and ARA Health Services, Inc., d/b/a Correctional Medical Systems, a private corporation hired by the Sheriff as an independent contractor to provide health care to the inmates in his control. In his final complaint, Mr. Ingram, a pretrail detainee, alleged that the above-named defendants violated his Fourteenth Amendment right to be free from deliberate indifference to serious medical needs as well as his Fourth and Fourteenth Amendment right to be free from an unreasonable seizure. His claim was premised solely upon 42 U.S.C. § 1983 and did not seek damages for "reasonable medical care" or medical malpractice under Florida Statute. § 766.102, Fla. Stat. (1989).

B. Statement of the Facts

While Mr. Ingram emphasizes the alternative forms of care that he did not receive, we believe that it is more appropriate to set out the care that he was provided as well as the testimony directed at causation. On September 20, 1990, Mr. Ingram was involved in a fight with another inmate housed with him in the jail's psychiatric unit. Mr. Ingram was injured and later seen by several health care providers at the jail. Dr. Stephen Szabo, a physician specializing in psychiatry, treated Mr. Ingram prior to the fight and testified that he had refused to take some of his antipsychotic medications. Further, Mr. Ingram was behaving aggressively, being uncooperative, and acting hostile to the nurses. Dr. Szabo referred Mr. Ingram to the

health clinic after Mr. Ingram complained of his eye and teeth. Dr. Szabo's testimony clearly established that Mr. Ingram was seen by a physician or nurse at the jail on September 21, the day after the incident, and on September 24, 25, 26, 28 and October 1, 3, 5, 8, 10, 12, and 15.

Beth Junkin, a licensed advanced registered nurse practitioner at the facility, evaluated Mr. Ingram on September 26 and diagnosed his condition as conjunctivitis. Conjunctivitis is an inflammation of the conjunctiva (the membrane that lines the eyelids) generally consisting of conjunctival hyperemia (an excess of blood in a part) associated with a discharge. Mr. Ingram was given medication and followed by the shift nurses. At Dr. Szabo's orders, Nurse Junkin evaluated Mr. Ingram again on October 11 and determined that there was some decrease in his eyesight. She opined that the iris had a discoloration at the edge and there was at this point some bleeding into the actual anterior chamber of the eye. Accordingly, she got Gary Schecodnic, an in-house general practitioner at the jail, to check Mr. Ingram's condition. Dr. Schecodnic evaluated Mr. Ingram on that very day and referred him out to an outside independent eye specialist also on that very same day. Dr. Schecodnic noted that Mr. Ingram had a gradual amount of decrease in visual acuity after the trauma.

William White, an ophthalmologist, saw Mr. Ingram on October 11 (the day of referral by Dr. Schecodnic) and again on October 15. He stated that there had been a change from the 11th to 15th in Mr. Ingram's eyesight which concerned him. Thus he "reexamined his eye before doing the B-scan and found that the cataract had increased dramatically." [R9-154-155] The increase in the

cataract, however, did not need immediate medical attention because "when an eye has been traumatized, it's a good idea if you do have a cataract to try not to disturb the eye until the eye has had a chance to quiet down because that makes removal of the cataract much more successful." [R9-154-155] After the October 15 visit, Dr. White "recommended that Mr. Ingram be reevaluated in about one month's time," but did not recommend surgical intervention because it was not indicated. Dr. White opined within a reasonable degree of medical probability that "If Mr. Ingram had the same presentation [at the time of the incident as] . . . when I first saw him, I would not have changed my treatment." [R9-156] Mr. Ingram was released from jail several days later.

SUMMARY OF ARGUMENT

The Eleventh Circuit's decision does not conflict with another decision of a United States court of appeals because the Eleventh Circuit never issued an opinion. The respondents asserted multiple grounds for affirming the jury's verdict and the district court's final judgment. The petitioner is simply speculating by alleging conflict in the appeal. Further, the petition fails to establish other special and important reasons to obtain review through a writ of certiorari. Last, the argument that pretrial detainees' rights should be analyzed under the Fourth Amendment is misplaced.

REASONS FOR DENYING THE WRIT

The petition fails to satisfy the criteria established by this court to determine whether to grant a writ of certiorari. Further, the petition fails to provide any alternative special and important reasons to obtain review on writ of certiorari. Having provided no basis for a writ of certiorari, the petition should be denied.

A. The Lack of Conflict

Mr. Ingram first maintains that the Eleventh Circuit's opinion is in conflict with the decision of another United States court of appeals on the same matter. This argument is purely speculative in that the Eleventh Circuit never rendered an opinion in this appeal. Instead, the court affirmed the judgment of the trial court without an opinion under Eleventh Circuit Rule 36-1, which states that the court may affirm without opinion in cases that have no precedential value. We note that the defendants opposed Mr. Ingram's appeal on several grounds, not just the single ground raised by Mr. Ingram in this petition. For example, they maintained that the evidence did not show any causal connection between the health care furnished to Mr. Ingram and the subsequent loss of his eye. Their argument was based in part on the opinions of Dr. William White, the independent ophthalmologist who treated Mr. Ingram, who admitted that his care and treatment of Mr. Ingram on October 15, 1990, would have been no different had Mr. Ingram seen him earlier. Accordingly, given the lack of a written opinion, it is impossible to determine the actual basis of the Eleventh

Circuit's decision and whether it decided to conflict with another United States court of appeal.

B. Any Conflict is Uncertain

As opposing counsel has correctly stated, with the exception of one circuit court, the circuit courts have universally held that a pretrail detainee must establish a deliberate indifference to a serious medical need in order to be successful under a section 1983 civil rights claim. *Belcher v. City of Foley*, 30 F.3d 1390 (11th Cir. 1994); *Hamm v. DeKalb County*, 774 F.2d 1567 (11th Cir. 1985), *cert. denied*, 475 U.S. 1096, 106 S.Ct. 1492, 89 L.Ed.2d 894 (1986); *Kost v. Kozakiewicz*, 1 F.3d 176 (3rd Cir. 1993); *Whisenant v. Yuam*, 739 F.2d 160 (4th Cir. 1984); *Heflin v. Stewart County*, 958 F.2d 709 (6th Cir.), *cert. denied*, ___ U.S. ___, 113 S.Ct. 598, 121 L.Ed.2d 535 (1992); *Roberts v. City of Troy*, 773 F.2d 720 (6th Cir. 1985); *Salazar v. City of Chicago*, 940 F.2d 233 (7th Cir. 1991); *Archie v. City of Racine*, 847 F.2d 1211 (7th Cir. 1988), *cert. denied*, 489 U.S. 1065, 109 S.Ct. 1338, 103 L.Ed.2d 809 (1989); *Ervin v. Busby*, 992 F.2d 147 (8th Cir.), *cert. denied*, ___ U.S. ___, 114 S.Ct. 220, 126 L.Ed.2d 176 (1993); *Boswell v. Sherburne County*, 849 F.2d 1117 (8th Cir. 1988), *cert. denied*, 488 U.S. 1010, 109 S.Ct. 796, 102 L.Ed.2d 787 (1989); *Jones v. Johnson*, 781 F.2d 769 (9th Cir. 1986); *Garcia v. South Lake County*, 768 F.2d 303 (10th Cir. 1985). The application of the deliberate indifference standard to a pretrial detainee is consistent with the application of this standard to a convicted prisoner as set out in this Court's decision in *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). It is also consistent with the Court's opinion in *City of Canton, Ohio v. Harris*, 489 U.S. 378, 109 S.Ct. 1197,

103 L.Ed.2d 412 (1989), which held that a pretrial detainee's § 1983 action for lack of medical attention due to inadequate police training is actionable only when the pretrial detainee alleges that the failure to train amounts to a deliberate indifference on the part of the police directed toward the people they come into contact with.

The only circuit that has not fully embraced this line of case law is the Fifth Circuit. *See Hare v. City of Corinth*, 36 F.3d 412 (5th Cir. 1994), *order granting rehearing en banc*, 36 F.3d 417 (5th Cir. 1994). Ever since its decision in *Jones v. Diamond*, 636 F.2d 1364 (5th Cir.) (*en banc*), *amended*, 453 U.S. 911, 101 S.Ct. 3141, 69 L.Ed.2d 1033, *cert. dismissed by agreement*, 453 U.S. 950, 102 S.Ct. 27, 69 L.Ed.2d 1033 (1981), the Fifth Circuit has relied upon a lesser standard for pretrial detainees other than deliberate indifference. Its holding, however, is currently under review because a majority of the judges granted a rehearing en banc in that case. To date, the Fifth Circuit has not announced its final position on this issue and thus it is entirely possible that it will recede from its prior holding and join the majority of the circuit courts.

C. No Other Special and Important Reasons

Finally, the petitioner seeks a writ of certiorari on grounds that this Court's decision in *Albright v. Oliver*, ___ U.S. ___, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994), which involves an arrest in the absence of probable cause, tangentially supports certiorari review because the Court's analysis was premised on the Fourth Amendment. Along these lines, Mr. Ingram requests the Court to review his case and hold that a pretrial detainee may maintain a

§ 1983 action under the Fourth Amendment. We believe that this issue was not preserved for appellate review in the district and circuit courts. Further, we believe that the Eighth and Fourteenth Amendments are sufficient to protect convicted prisoners and pretrial detainees.

CONCLUSION

Based on the foregoing, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

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